SINGAPORE REPORTS

LARIZA (SINGAPORE) PTE. LTD. v. BANK NEGARA INDONESIA 1946

[O.C.J. (Lai Kew Chai J.) May 16, 1984]
[Singapore – Suit No. 5365 of 1982]

Banking law – Letter of credit – Transferable and irrevocable sight letter of credit – Whether issuing bank under contractual obligation to effect transfer – Claim against issuing bank for indemnity – Breach of contract – Negligence.

In this case, the plaintiffs were commodities traders and the defendants were bankers. The plaintiffs agreed to sell palm oil to their buyers and agreed to buy from their suppliers similar quantities of palm oil at lower prices. It was agreed between the plaintiffs and their buyers that payment for the palm oil was to be effected by a transferable and irrevocable sight letter of credit the opening of which was to be advised by the Bank of Canton. The defendants eventually issued the required transferable letter of credit in favour of the plaintiffs. The Bank of Canton refused to transfer the letter of credit. The defendants also refused the plaintiffs' request to transfer the letter of credit to their suppliers, who sued the plaintiffs for damages for breach of contract as the plaintiffs did not take delivery of the palm oil. The suppliers obtained judgment against the plaintiffs. The plaintiffs then sought a declaration that they were entitled to be indemnified by the defendants against the claims of the suppliers.

Held: (1) the plaintiffs had no cause of action against the defendants as the issuing bankers of the letter of credit;

(2) an issuing bank of the letter of credit has no obligation whatsoever to enter into a new contract with an intended transferee. The defendants as the issuing bank only had the obligation to pay against conforming documents which were never tendered,

(3) the claim in negligence must also fail. The plaintiffs' claims should be dismissed with costs.

[*Editorial Note:* The plaintiffs' appeal against the above judgment was heard on January 15, 1985 in C.A. No. 46 of 1984 by the Court of Appeal (Wee Chong Jin C.J., Thean & Chua JJ.). Judgment was reserved].

CIVIL SUIT.

Ms. Belinda Ang Saw Ean for the plaintiffs.
C.R. Rajah for the defendants.

Cur. Adv. Vult.

Lai Kew Chai J.: In this case, the Plaintiffs are seeking a declaration that they are entitled to be indemnified by the Defendants against the claims of the Plaintiffs' sellers or, alternatively, the Plaintiffs claim against the Defendants damages quantified in the sum of US$128,000.00 for breach of contract or negligence.

The Plaintiffs are traders in commodities, particularly in crude palm oil, and the Defendants are bankers, with a branch in Singapore.

By two agreements concluded in early 1980 the Plaintiffs had agreed to sell to Bakrie & Brothers (Singapore) Pte Ltd ("Bakrie") two lots of unbleached crude palm oil in bulk of 3,000 and 2,000 metric tonnes at the price of US$627 and $670 per metric ton respectively. It was agreed between them that payment for the palm oil was to be effected by a transferable and irrevocable sight letter of credit, the opening of which was to be advised by another bank in Singapore, Bank of Canton.

At or about the same time, the Plaintiffs had agreed to buy similar quantities of the palm oil, back to back, from Ban Lee Oil Mill Co. (S) Pte. Limited ("Ban Lee") at the lower prices of US$601 and US$645 per metric ton respectively.

The Defendants eventually opened or issued the required transferable letter of credit in favour of the Plaintiffs. On February 19, 1980, the Bank of Canton advised the Plaintiffs of the opening of the letter of credit. The Plaintiffs requested the Bank of Canton to transfer the letter of credit. But the Bank of Canton declined to do so. Four days later, the Plaintiffs by letter requested the Defendants to transfer the benefit of the said letter of credit to Ban Lee, their suppliers. But on February 27, 1980, the Defendants refused to comply with the request of the Plaintiffs. The Plaintiffs took the view that the refusal was wrongful. In the event, the Plaintiffs did not take delivery of the palm oil from Ban Lee and therefore could not deliver them to Bakrie. In the meantime, Bakrie had become insolvent and was wound up. As was inevitable the Plaintiffs were sued by Ban Lee in the High Court for damages for breach of the contracts of sale. Ban Lee obtained judgment with damages to be assessed against the Plaintiffs.

The Plaintiffs now claim against the Defendants, who had issued the letter of credit, for breach of their alleged contractual duty in wrongfully refusing to transfer the letter of credit to Ban Lee and for damages for negligence.

In my judgment, the Plaintiffs have no cause of action against the Defendants as the issuing bank-

ers of the letter of credit. A transfer of the letter of credit, as must be well known, involves a new contract between a bank and the intended transferee of the letter of credit. A separate letter of credit in favour of the transferee has to be issued. No contractual commitment on the part of the Defendants having been made, the Plaintiffs should have made their own contractual arrangements with their own bankers, usually the notifying bank, such as the Bank of Canton. An issuing bank of the letter of credit has no obligation whatsoever to enter into a new contract with an intended transferee. The Defendants as the issuing bank only had the obligation to pay against conforming documents which were never tendered.

The claim in negligence must also fail. In my view, it is beyond dispute that no duty of care had arisen in the purely commercial context in this case.

I therefore dismiss the Plaintiffs' claims with costs.

Claims dismissed.

Solicitors: *Godwin & Co.; Tan Rajah & Cheah.*

LIM CHENG WAH v NG YAW KIM

[O.C.J. (Thean J.) November 9, 1984]
[Singapore – Suit No. 1883 of 1981]

Damages – Interest – Court's discretion – Award of interest fully within the discretion of the court – Civil Law Act (Cap. 30), s. 9 – R.S.C. 1970, O. 42 r. 12 – Law Reform (Miscellaneous Provisions) Act, 1934, s. 3 (U.K.) – Administration of Justice Act 1969, s. 22 (U.K.).

In this case both the plaintiff and the defendant obtained compensation for loss and damage to their respective vehicles in an accident which occurred on May 9, 1978 and for which both were equally to blame. It was conceded by both parties that the defendant was to pay to the plaintiff damages in the sum of $13,505.38 and the plaintiff to pay to the defendant damages in the sum of $900.00. Counsel for the plaintiff applied under section 9 of the Civil Law Act for interest on the sum awarded.

The issue before the court was whether interest should be awarded on the said amounts respectively, and if so, at what rate and for what period should the interest be awarded.

Held: (1) the award of interest on the amount for which judgment is given is fully within the discretion of the court;

(2) since the plaintiff and the defendant had each been out of pocket in that they had actually paid the expenses incurred in repair of their respective motor vehicles they were entitled to interest on the judgment sum;

(3) interest should not be considered as further compensation or a part of the damage for loss or injury sustained; damages are not a matter of discretion for the court, whereas interest is;

(4) judgment should be given for the plaintiff on his claim in the sum of $13,505.38 with interest at 8% p.a. from June 9, 1981 to the date of judgment and judgment for the defendant on his counterclaim in the sum of $900.00 with interest at the same rate and for the same period.

Cases referred to:

(1) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253.
(2) *Lai Chi Kay & Ors.* v. *Lee Kuo Shin* [1981] 2 M.L.J. 167.
(3) *Harbutt's Plasticine Ltd.* v. *Wayne Tank & Pump Co. Ltd.* [1970] 1 Q.B. 447.
(4) *Jefford* v. *Gee* [1970] 1 All E.R. 1202.
(5) *Pickett* v. *British Rail Engineering Ltd.* [1979] A.C. 136; [1978] 3 W.L.R. 955.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.
K. Jayabalan for the defendant.

Cur. Adv. Vult.

Thean J.: The claim and the counter-claim in this action arose out of an accident on May 9, 1978 in which a motor car, SE 3 R, driven by the Plaintiff collided with a taxi, SH 2383, driven by the Defendant at or near the junction of East Coast Road and Still Road. The Plaintiff claimed against the Defendant for loss and damage to the car caused by the negligence of the Defendant. The Defendant denied negligence and in turn counter-claimed for loss and damage to his taxi caused by the negligence of the Plaintiff.

When the action came on for trial the parties have agreed on the following issues, namely:

(a) that both Plaintiff and Defendant are equally to blame and that each party is liable to the other to the extent of 50% of the claim and counter-claim respectively.

(b) that on the basis of the said apportionment of liability the Defendant is to pay to the Plaintiff damages in the agreed sum of $13,505.38 and the Plaintiff to pay to the Defendant damages in the agreed sum of $900.